

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

DANIEL WADE COOTS, §
§
Plaintiff, §
VS. § CIVIL ACTION NO. G-11-3
§
CITY OF KEMAH, *et al*, §
§
Defendants. §

ORDER

Before the Court are the defendants, T. Wayne Lockett and Richard Burgess', motion to dismiss the plaintiff, Daniel Wayne Coots', suit for failure to state a claim, pursuant to Federal Rules of Civil Procedure, Rule 12(b)(6). The defendants seek also by this motion alternatively, summary judgment relief. The plaintiff has filed a response which the Court determines, along with the plaintiff's pleadings, sufficiently states a cause of action against the defendants. *See Bell Atl. Corp. V. Twombly*, 550 U.S. 544, 555-56, 570 (2007).

The plaintiff has alleged that he was wrongfully detained. He also asserts that he suffered physical injuries. In the Court's opinion, these facts, taken as true, are sufficient to overcome a Rule 12(b)(6) motion. Therefore, the defendants' motion to dismiss is Denied.

The Court also denies, without prejudice, the defendants' motion for summary judgment. Again, the plaintiff's pleadings are sufficient to overcome the defendants' own self-serving allegations of facts. An arrest that results in broken ribs cries out for further investigation. In this circumstance, whether the defendants are entitled to

qualified immunity rests in the details of their conduct yet to be revealed. Therefore, the Court is of the opinion that a motion for summary judgment is premature and is provisionally Denied.

It is so Ordered.

SIGNED at Houston, Texas this 20th day of July, 2011.



Kenneth M. Hoyt
United States District Judge